

STATE ALLOCATION BOARD

1130 K Street, Suite 400
Sacramento, CA 95814
<http://www.dgs.ca.gov/opsc>



Date: August 29, 2005

To: Interested Parties

Subject: **NOTICE OF THE STATE ALLOCATION BOARD
IMPLEMENTATION COMMITTEE MEETING**

Notice is hereby provided that the State Allocation Board Implementation Committee will hold a meeting on Friday, September 9, 2005 (9:30 am - 3:30 pm) in the East End Complex, located at 1500 Capitol Avenue, Rooms 72.149B & 72.148C in Sacramento.

The Implementation Committee's proposed agenda is as follows:

1. Discussion of the proposed regulatory amendments to address Financial Hardship Equity Issues as directed by the State Allocation Board on May 3 2005 and May 25, 2005.

A copy of the State Allocation Board items are posted on the OPSC Web site at www.opsc.dgs.ca.gov under the "SAB Agenda Item History" section.

Any interested person may present public testimony or comments at this meeting regarding the issues scheduled for discussion. Any public input regarding unscheduled issues should be presented in writing, which may then be scheduled for a future meeting. For additional information, please contact Ms. Linda Martinez at (916) 445-3159.

A handwritten signature in black ink that reads "Maivonne Garrity".

MAVONNE GARRITY, Chairperson
State Allocation Board Implementation Committee

MG:lm

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<http://www.dgs.ca.gov/opsc>**Implementation Committee
2005 MEETING CALENDAR****Friday, September 9, 2005**1500 Capitol Ave. Rms. 72.149B & 72.148C
Sacramento, CA**Friday, November 4, 2005**1500 Capitol Ave. Rms. 72.149B & 72.148C
Sacramento, CA**Friday, October 7, 2005**1020 N Street (Leg. Off. Bldg.), Room 100
Sacramento, CA**Friday, December 2, 2005**1500 Capitol Ave. Rms. 72.149B & 72.148C
Sacramento, CA

Meeting times are scheduled from 9:30 am to 3:30 pm with a 1-hour lunch break.

Meeting times, dates and locations are subject to change.

STATE ALLOCATION BOARD
IMPLEMENTATION COMMITTEE
September 9, 2005

Financial Hardship Equity Issues

PURPOSE

To present proposed regulatory amendments to the Financial Hardship Program.

BACKGROUND

There have been detailed discussions and numerous suggestions provided at the previous three Implementation Committee meetings regarding Financial Hardship equity issues, which have been incorporated into the proposed Financial Hardship regulations. At the August 5, 2005 Implementation Committee meeting, the Office of Public School Construction presented proposed Financial Hardship regulations for discussion and received input from the Implementation Committee and audience.

DISCUSSION

Based on comments and discussion at the last Implementation Committee meeting the proposed regulations have been updated (See Attachment A for a summary of these changes). The text of proposed regulation changes can be found in Attachment B.

Some of the comments, from the last Implementation Committee meeting, that were taken into consideration but did not result in changes to the proposed regulation include:

Although the date of occupancy was suggested for purposes of ending the financial hardship time period, it was not used as an indicator of project completion in section 1859.81(a)(5). Staff believes the date of occupancy may not be a true indicator of project completion. There are many instances of school facilities being occupied prior to actual punch lists and change orders being completed. Taking that into account, the project is not complete and further expenditures may be incurred. Staff believes a 100 percent expenditure report is a true indicator of project completion. In addition current regulation section 1859.104(a)(1)(B) sets forth a definite time period to complete projects (i.e. three years for elementary school projects and four years for middle and high school projects).

Another area of interest concerned modernization projects and a proposal to allow districts to spend beyond the SFP modernization grants utilizing local revenue sources. Sections 1859.81(d) and 1859.106(c) were not changed to include modernization projects. The original intent of the regulatory changes was to allow financial hardship school districts to build new schools, under the SFP new construction program, with the required minimum essential facilities.

In response to concerns that the proposed regulatory amendments may violate the "full and final" statute, the State Allocation Board's legal counsel has opined that the proposal to adjust the SFP Financial Hardship grant based on future Capital Projects Fund revenue will not impact the State's full and final funding share.

Attachment A

Summary of Changes to Proposed Regulatory Amendments from the August 5, 2005 Implementation Committee Meeting

Section	Proposed Change
Reg. Section 1859.81(a)	The start date for the regulatory provision to disallow encumbrances dated within one year prior to the initial financial hardship request was changed to October 1, 2006. The provision also includes a phase-in period change beginning October 1, 2005.
Reg. Section 1859.81(a)	A provision was added to clarify that expenditures and encumbrances will be allowed for previously approved non-financial hardship projects up to the approved district contribution amount.
Reg. Section 1859.81(a)	The provision regarding annual financial hardship reviews and adjustments to financial hardship grants was changed to also accommodate Modernization projects.
Reg. Section 1859.81(d)	The term "funding mechanisms" was replaced with the term "revenue sources".
Reg. Section 1859.81(d)	The language in section 1859.81(d) has been modified to provide that Staff will review requests to ensure that the facility, the district is asking to add back into the project was included in the set of plans originally submitted and approved by CDE, DSA and SAB.
Reg. Section 1859.81(d)	Language was added to clarify that the state apportionment will not be increased when a district is allowed to spend beyond the SFP grants utilizing local revenue sources.

Attachment B

Proposed Regulations for Financial Hardship Equity Issues

Section 1859.81. Financial Hardship.

Except for Joint-Use Projects, a district is eligible for financial hardship to fund all or a portion of its matching share requirement after demonstrating Compliance with subsection (a) and (c). ~~both of the following:~~

- (a) The district is financially unable to provide all necessary matching funds for an eligible project. To determine this, an analysis shall be made of the district's financial records by the OPSC including data and records maintained by the CDE and the County Office of Education. The analysis shall consist of a review of the district's latest Independent Audit regarding funds available from all capital facility accounts, including, but not limited to, developer fees, funds generated from capital facility certificates of participation, federal grants, redevelopment funds, sale proceeds from surplus property, the appraised value of facilities approved for replacement pursuant to Section 1859.82, bond funds either encumbered, unencumbered or authorized but unsold, and savings from other SFP projects. For Financial Hardship requests filed prior to October 1, 2006, all funds thus identified shall be deemed available as matching contribution unless the funds are that have not been expended or encumbered by a contractual agreement for a specific capital outlay purpose prior to October 1, 2005. For Financial Hardship requests filed on or after October 1, 2006, all funds identified shall be deemed available as matching contribution unless the funds are expended or encumbered by a contractual agreement at least one year prior to the initial financial hardship request. For districts with both financial hardship and previously approved non-financial hardship projects, approvable expenditures and encumbrances will be allowed on the non-financial hardship projects after October 1, 2006 not to exceed the Board approved district contribution. prior to the initial request for financial hardship status shall be deemed available as a matching contribution. The initial and successive financial hardship approvals will be valid for one year. Subsequent to the initial approval, districts will be required to submit annual financial hardship data pursuant to this section until the 100 percent final expenditure report has been accepted for the last financial hardship New Construction Adjusted Grant or Modernization Adjusted Grant funding apportionment. Any additional funds found available from these annual reviews of the district's finances shall necessitate an adjustment to the financial hardship grant and an increase in the district contribution to a maximum of the district's share of project costs for the New Construction and/or Modernization project(s).

After the initial request for financial hardship status is granted, no further encumbrances will be approved by the OPSC and all prospective revenue made available to the district's capital facility accounts shall be deemed available as matching contribution on the subsequent financial hardship review, with the exception of:

- (1) Approved interim housing expenditures.
- (2) Funding to pay for previously recognized multi-year encumbrances approved at the initial financial hardship approval.
- (3) Funding that is transferred into a Special Reserve Fund and is used for the express purpose of the Federal Renovation Program when the amount expended out of that fund does not exceed the maximum Federal Renovation Grant amount.
- (4) Funding that is transferred into a Special Reserve Fund and is used for the express purpose of the School Facilities Needs Assessment Grant Program or Emergency Repair Program when the amount expended out of that fund does not exceed the maximum grant amount apportioned.
- (5) All other capital facility funding after the 100 percent complete final expenditure report has been accepted for all of the district's financial hardship New Construction Adjusted Grant or Modernization Adjusted Grant funding apportionment(s). ~~for a period of three years when no subsequent financial hardship request is made during this period. The three year period begins with the date of the most recent financial hardship new construction or modernization adjusted grant funding apportionment.~~

The financial hardship analysis is subject to approval by the Board.

- (b) From the funds deemed available as a matching contribution, the district may retain \$19,776 per classroom in each enrollment reporting period for the cost to provide interim housing for the currently unhoused pupils of the district. The amount shown shall be adjusted annually in the manner prescribed in Section 1859.71. The number of classrooms needed for interim housing for the currently unhoused pupils shall be the sum of the positive numbers determined in (b)(7) as follows:
- (1) Determine the current enrollment of the district by grade level as shown on the latest Form SAB 50-01.
 - (2) Determine the New Construction Grants apportioned by grade level for all SFP projects and LPP funded under the provisions of Sections 1859.12 or 1859.13 where the district has submitted Form SAB 50-06 indicating that the project is 100 percent complete.
 - (3) Subtract (b)(2) from (b)(1).
 - (4) Determine the number of classrooms by grade level reported in Part 1, Line 8 on Form SAB 50-02.
 - (5) Multiply the classrooms determined in (b)(4) by 25 for K-6, 27 for 7-12, 13 for Non-Severe and 9 for Severe.
 - (6) Subtract the product determined in (b)(5) from the difference determined in (b)(3) by grade level.
 - (7) Divide the difference by grade level determined in (b)(6) by 25 for K-6, 27 for 7-12, 13 for Non-Severe and 9 for Severe and round up to the nearest whole number.

From the funds deemed available as a matching contribution, the district may also retain \$19,776 per portable toilet unit in each reporting period for the cost to provide necessary interim toilet facilities for the currently unhoused pupils of the district. The amount shown shall be adjusted annually in the manner prescribed in Section 1859.71. The number of toilet facilities needed for interim housing shall be the sum of the positive numbers determined in (b)(7) divided by eight rounded up to the nearest whole number.

If the district's available funds, as determined by the OPSC analysis less costs for interim housing, is less than its matching share, the district will be deemed to have met the requirements of this Subsection.

- (c) The district has made all reasonable efforts to fund its matching share of the project by demonstrating it is levying the developer fee justified under law or an alternative revenue source equal to or greater than the developer fee otherwise justified under law at the time of request for hardship and the district meets at least one of the following:
- (1) The current outstanding bonded indebtedness of the district issued for the purpose of constructing school facilities in accordance with Education Code Section 17072.35 or 17074.25 as appropriate, at the time of request for financial hardship status, is at least 60 percent of the district's total bonding capacity. Outstanding bonded indebtedness includes that part of general obligation bonds, Mello-Roos Bonds, School Facility Improvement District Bonds and certificates of participation which the district is paying a debt service that was issued for capital outlay school facility purposes.
 - (2) The district had a successful registered voter bond election for at least the maximum amount allowed under Proposition 39 within the previous two years from the date of request for financial hardship status. The proceeds from the bond election that represent the maximum amount allowed under the provisions of Proposition 39 must be used to fund the district's matching share requirement for SFP project(s).
 - (3) It is a County Superintendent of Schools.
 - (4) The district's total bonding capacity at the time of the request for financial hardship status is \$5 million or less.
 - (5) Other evidence of reasonable effort as approved by the SAB.

If the district's request for financial hardship status is denied by the Board, the district may be deemed eligible for rental payments of \$2,000 per year per classroom under the Emergency School Classroom Law of 1979 for a two year period when relocatable classroom buildings are available and the district provides financial documentation that

it is unable to afford the full rental amount and any other information satisfactory to the Board that the rental reduction is necessary. The number of classrooms eligible for the \$2,000 rental payments shall be the sum of the numbers determined in (c)(5)(B) as follows:

- (A) Determine the number of pupils by grade level that the district requested a New Construction Grant on the Form SAB 50-04 that were denied financial hardship status.
- (B) Divide the number by grade level determined in (c)(5)(A) by 25 for K-6, 27 for 7-12, 13 for Non-Severe and 9 for Severe and round up to the nearest whole number.
- (d) Based upon satisfactory evidence, the Board may allow financial hardship districts to spend beyond their SFP project costs utilizing local revenue sources to enable the construction of a school containing minimum essential facilities as specified in Section 1859.82(b) necessary to complete the project and it will not result in an increase to the district contribution to the State for the project. An analysis will be made to determine that the facilities the district is seeking to have added back into the project were originally included in the plans approved by the CDE, DSA, and SAB. Any local revenue sources which exceed the amount necessary to complete the school as described in this section would be deemed available for the district's matching contribution.

If the district meets the financial hardship requirements in this Section, the amount of financial hardship is equal to the district's matching share less funds deemed available in (a), and as adjusted in (b).

Once a district has been notified by the OPSC that it meets the requirements of financial hardship in this Section, the district may file Form SAB 50-04 under the provisions of financial hardship anytime within a period of ~~180~~ 365 calendar days from the date of the OPSC notification.

If the district does not submit Form SAB 50-04 under the provisions of financial hardship within ~~180~~ calendar days of the OPSC notification of approval of financial hardship status, the district must re-qualify for financial hardship status under the provisions of this Section by submittal of a new request for financial hardship status.

If the district submits Form SAB 50-04 within ~~180~~ calendar days of the OPSC notification of approval of financial hardship and the project(s) has been included on an unfunded list for more than ~~180~~ calendar days, a review of the district's funds pursuant to (a) will be made to determine if additional district funds are available to fund the district's matching share of the project(s).

Financial hardship approval status by the OPSC for a separate design and/or site apportionment does not apply to any subsequent funding for the project(s).

Note: Authority cited: Sections 17070.35, 17075.15 and 17592.73, Education Code.

Reference: Sections 17075.10 and 17075.15, Education Code.

Section 1859.106. Program Accountability Expenditure Audit.

The projects will be audited to assure that the expenditures incurred by the district were made in accordance with the provisions of Education Code Section 17072.35 for new construction projects, Section 1859.120 for Joint-Use Projects, Section 1859.140 for Critically Overcrowded School projects, Section 1859.160 for Charter School projects, and Education Code Section 17074.25 and Section 1859.79.2 for modernization projects. The audit will also assure that the district complied with all site acquisition guidelines as provided in Education Code Sections 17072.13 and 17072.14 and Sections 1859.74, 1859.74.1, 1859.74.2, 1859.74.3, 1859.74.4, 1859.75 and 1859.75.1.

An adjustment in the SFP grant will be made for the following:

- (a) The difference in the value of the site, relocation costs, DTSC fees, and hazardous waste/materials removal costs that were used to determine the New Construction Additional Grant and the actual amount paid by the district for the site, relocation costs, DTSC fees, and hazardous waste/materials removal costs. For

applications received on or after January 1, 2004, the adjustment may be made regardless of whether the hazardous waste/materials removal costs were requested on the application for funding.

- (b) For 50 percent of any insurance proceeds collectable by the district for displaced facilities and 50 percent of the net proceeds available from the disposition of displaced facilities pursuant to Section 1859.82(a) or (b).
- (c) For financial hardship districts, any amount beyond what was necessary to provide funding for minimum essential facilities as approved by the SAB pursuant to Section 1859.81(d) necessary to complete the project as originally approved by the CDE, DSA, and SAB. All funds available to the capital facility accounts are permissible funding sources to fund these minimum essential facilities.

When the OPSC receives the final expenditure report from the district on Form SAB 50-06, an audit of the expenditures by the OPSC shall commence within two years of the report. If the district is not notified by the OPSC within the two-year period that an audit will be made, there will be no audit of the project by the OPSC and the expenditures reported by the district shall be deemed appropriate. If the district has been notified that an audit of the expenditures will be made by the OPSC, the OPSC shall complete the audit within six months of the notification, unless additional information requested from the district has not been received.

Districts shall be required to maintain all appropriate records that support all district certifications and expenditures for all costs associated with SFP, Charter School, and Joint-Use projects for a period of not less than four years from the date the notice of completion is filed for the project in order to allow other agencies, including, without limitation, the Bureau of State Audits and the State Controller to perform their audit responsibilities.

The district is responsible to substantiate expenditures from the Joint-Use Partner(s) financial contribution pursuant to Section 1859.127 and from other local sources.

Should the OPSC conduct an audit of the district certifications or the expenditures for the project and make a finding that some or all of the expenditures were not made in accordance with the provisions of Education Code Section 17072.35 for new construction projects, Section 1859.120 for Joint-Use Projects, Section 1859.140 for Critically Overcrowded School projects, Section 1859.160 for Charter School projects, Education Code Section 17074.25 and Section 1859.79.2 for modernization projects, and Education Code Sections 17072.13 and 17072.14 for projects with additional costs imposed by the DTSC, the OPSC shall recommend to the Board that the apportionment be adjusted based on the audit findings. Upon adoption of the audit findings by the Board, the district must submit a warrant for any amount identified as being owed within 60 days of the Board action. If this does not occur, the OPSC shall initiate collection procedures from the School Fund Apportionment as outlined in Education Code Section 17076.10(c).

Should the CDE make a finding that a project did not meet the standards that were adopted by the CDE pursuant to Education Code Section 17251 (b) and (c) when the district had self-certified that the project met those standards pursuant to Education Code Section 17070.50 (b), the Board may request that the CDE make a recommendation that the apportionment for the project be adjusted based on the CDE finding. Any adjustment in the apportionment shall be based on the percentage of space in the project that the CDE determined did not meet those standards. Upon adoption of the finding by the Board, the district must submit a warrant for any amount identified as being owed within 60 days of the Board action. If this does not occur, the OPSC shall initiate collection procedures from the School Fund Apportionment as outlined in Education Code Section 17076.10 (c).

Note: Authority cited: Section 17070.35, Education Code.

Reference: Sections 17070.35, 17070.50, 17072.13, 17072.14, 17072.18, 17072.35, 17074.25, 17076.10, 17077.40, 17078.52 and 17251, Education Code.